Modified PTO/SB/33 (10-05)

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number Q103120	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/500,900	Filed April 21, 2005
	First Named Inventor Denis J. D. FAUCONNIER	
	Art Unit 2617	Examiner Fred A CASCA

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

☑ I am an attorney or agent of record.
Registration number 28,703

/DJCushing/
Signature

David J. Cushing
Typed or printed name

(202) 293-7060
Telephone number

August 5, 2010
Date

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Denis J. D. FAUCONNIER, et al.

Docket No: Q103120

Appln. No.: 10/500,900

Group Art Unit: 2617

Confirmation No.: 8868

Examiner: Fred A CASCA

Filed: April 21, 2005

For: METHOD FOR CONTROLLING COMMUNICATION CHANNELS AND BASE STATION AND TERMINAL THEREFOR

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated February 5, 2010, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

In the final Office action mailed February 5, 2010, claims 1-39 (all claims pending in the application) are rejected for failure to satisfy the enablement requirement of the first paragraph of 35 USC § 112. Claims 1-9 and 14-39 are rejected as unpatentable over Odenwalder et al in view of Akao and further in view of Shurvinton et al. Claims 1-9 and 14-39 are also rejected as unpatentable over Odenwalder et al in view of Akao and further in view of Kayama et al and still further in view of well known prior art (MPEP 2144.03) and further in view of Wang et al. In the remarks in support of this rejection, the examiner discusses claims 10-13, 20-31 and 33-39, so it is not entirely clear which claims are rejected. In any case, the rejection is not supportable.

In a typical cellular network, a control facility communicates with and controls a plurality of base stations, and each base station in turn handles communications within a cell surrounding

the base station and communicates with a plurality of mobile terminals. The mobile terminal must be advised of the channel(s) over which communication will be conducted. As discussed in the Background section of the present application, it is conventional for the control facility to manage the allocation of channels, with the control facility being provided with a set of communication resources that it can distribute at its convenience, for example upon a traffic channel request by a user. The control facility therefore makes communication channels available to a base station so that the latter can communicate with terminals under its zone of coverage. The control facility and the terminal converse according to a resource management protocol, transparent to the base station, in particular so that the terminal is informed of the channels to be used, in the form of a subset of the communication channels allocated to the base station.

The present invention is a modification of this conventional arrangement. The invention according to claim 1 includes the following steps for controlling communication channels between a base station and terminals: (1) allocating a list of shared channels to the base station, which list is composed of several sets of shared channels, for a communication session between the base station and a mobile terminal, (2) indicating to the terminal, from a control facility, the list of shared channels that is allocated to the base station; and (3) at the base station level, selecting for the terminal one of the sets of shared channels and, independently of the control facility, indicating the selected set to the terminal by way of a channel that is dedicated to communications with that terminal.

The enablement rejection is traversed for the reasons given at pages 2-3 of the Request for Reconsideration filed November 18, 2009. The prior art arrangement was for the control facility to advise the mobile terminal of the particular channel(s) to be used, the difference is that according to the invention the control facility advises the mobile terminal of the entire allocated list. It is inconceivable to maintain that one of skill in the art would not be able to design a system where the control facility advises the mobile terminal of the complete list of channels, given that the artisan already knew how to have the control facility advise the mobile terminal of the subset of channel(s) to be used.

At page 10 of the final Office action of February 5, 2010, the examiner has clarified that the basis for the rejection is that the specification does not describe whether the communicating of the list of shared channels from the control facility to the mobile terminal is by way of communication directly between the control facility and the mobile terminal or if it is a communication from the control facility to the mobile terminal through the base station. In order for a control facility to communicate directly with a mobile terminal without going through a base station, the mobile terminal would have to be able to wirelessly communicate with the mobile terminal over the entire range of all of the cells controlled by all the base stations controlled by the control facility. This would be impractical, and anyone of ordinary skill in the art would understand that the present application contemplates communication from the control facility to the mobile terminal through the base station.

More importantly, it does not matter which way the artisan would choose to implement the communication in question. The fact is that the artisan could implement the communication from the control facility to the mobile terminal in the exact same way as in the prior art systems, the difference being only the content communicated (i.e., the complete list instead of the subset to be used). Applicant sees no basis whatsoever for an assertion that the artisan would not be able to do this.

The prior art rejections are traversed for the reasons given at pages 2-4 of the response filed April 24, 2009, and for the additional reasons set forth at pages 2-6 of the Request for Reconsideration filed November 18, 2009.

In the final Office action at pages 11-12, the examiner cites to additional publications that have not been relied on in the rejection. If these publications somehow support the rejection, the rejection should be reformulated and copies of the references provided. More importantly, however, the comments of the examiner do not support the rejection, and in fact support applicant's traversal. The examiner is correct in that a base station is allocated frequencies that can be used. The examiner concludes that the allocation of frequencies to be used is done in a "top down" manner and therefore concludes that the base station must be advising the mobile

terminal of the subset of frequencies to be used. This is a logical leap motivated by having read the present application.

The present claims require that the base station advise the mobile terminal of the subset of allocated channels to be used, and that this be done independently of the control facility. Thus, if the base station communicates with the control facility about which frequencies should be used for a particular mobile and then the control facility makes a decision to use a particular subset and sends this information to the mobile terminal, and the base station relays this decision to the mobile terminal, this is not independent of the control facility as is required in the present claims. It is in fact the prior art already acknowledged in the present application and clearly distinguished in the present claims.

The examiner has assumed "top down" allocation of the channels, but has not pointed to anywhere in the prior art where this in fact happens. He has cited art teaching allocation of the larger set by the control facility, and that is all well and good, but the acknowledged prior art in the present application describes the control facility communicating the selected channel(s) to the mobile terminal, and the art so far cited by the examiner says nothing differently. In particular, there is no teaching or suggestion in the prior art of having the base station communicate a selected subset of channels to the mobile terminal independently of the control facility, and after having the control facility communicate the larger set to the mobile terminal.

For the above reasons, reversal of the examiner is requested..

Respectfully submitted,

/DJCushing/
David J. Cushing
Registration No. 28,703

SUGHRUE MION, PLLC
Telephone: (202) 293-7060

Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: August 5, 2010